INDEX

CITATIONS

476885—42——1

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 227

GREAT SOUTHERN TRUCKING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 317–327) is reported in 127 F. (2d) 180. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 43–77) are reported in 34 N. L. R. B. 1068.

JURISDICTION

The decree of the court below (R. 328) was entered on April 13, 1942. The petition for a writ of certiorari was filed on July 13, 1942. The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

The sole question presented is whether the Board's finding that a strike of petitioner's employees was caused by petitioner's unfair labor practices is supported by substantial evidence.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order (R. 43–77). The pertinent facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

In October 1938, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local No. 71 (herein called the Union), initiated a membership drive among petitioner's employees at its Charlotte, North Carolina, terminal (R. 47; R. 78–79). During the critical period of the drive, petitioner sought to defeat the organizational movement by discrediting the leaders

[1] In the following statement the references preceding the semicolons are to the Board's findings, and the succeeding references are to the supporting evidence.

of the Union, disparaging the advantages of unionization, seeking to impress the employees that joining the Union was futile and a waste of money, and attempting to instigate a countermovement for the formation of an unaffiliated union (R. 47–48; R. 274–276, 279–282, 289, 290–291, 293, 304, 234–235, 240–241).

In spite of this interference, the Union succeeded by April 1939, in securing the adherence of well over a majority of petitioner's employees in an appropriate unit (R. 51–52; R. 79–80, 265–266, 274, 302). On April 4, 1939, it instituted negotiations for a collective agreement with petitioner by mailing a proposed contract to petitioner's president, Raulerson, at petitioner's main office in Jacksonville, Florida, and requesting an early conference with him thereon (R. 52–53; R. 115–116). Raulerson replied that the proposed contract "offers little in the way of a basis for negotiations" but that he was referring it to petitioner's local officials and attorney at Charlotte; he also declared that he was then unable to come to Charlotte to negotiate directly with the Union, but would be "glad to come to Charlotte when the same is necessary" (R. 53; R. 116–117).

Thereafter, on May 6, June 24, and July 29, 1939, bargaining conferences were held in Charlotte between the Union's bargaining committee and petitioner's local officials and its Charlotte attorney (R. 53, 54, 57; R. 201–202, 203, 205, 129, 168).

During the period of the negotiations and thereafter, local officials of petitioner continued to engage in antiunion activity. Supervisors sought to induce resignations from the Union by solicitation, promises of better jobs for those who abandoned the organization, and threats that the employees had made "a terrible mistake" in joining it and that many would lose their jobs for doing so; they declared that Raulerson would "quit the business" rather than accept the Union, that he would never come to Charlotte to bargain, as the Union requested, as long as "you boys is in that union mess," that the Union was no good, "more or less a racket," "just a wildcat" organization, and that they preferred a "company union"; they in some cases questioned applicants for employment concerning their union adherence and attitude, and advised them and others against joining the Union (R. 48–51, 60; R. 276–288, 290, 291, 292, 293–295).

During the negotiations, also, petitioner, in order, as the Board found (R. 65), to demonstrate to the employees that "benefits could be secured without the intervention of the Union," granted the employees wage increases and annual vacations with pay, without consulting the Union or crediting it with any part in securing the concessions, although demands for such benefits were embodied in the Union's proposed contract and had been discussed during the bargaining conferences (R. 54, 56, 65; R. 120, 130, 138, 202, 203, 267, 283–284,

287, 300, 301–302).[2] Further, petitioner's bargaining representatives, as the Union conferees were informed, were never given authority to conclude any agreements on petitioner's behalf; Raulerson retained such authority to himself (R. 53–55; R. 266–267, 83–84, 152–153). Yet Raulerson failed to attend any of the meetings himself or to notify the Union of his presence even when he came to Charlotte, although the Union's representatives declared at the June 24 meeting that it was a "waste of time" to attempt to bargain with representatives who lacked contractual authority and although they expressed a desire that Raulerson come to Charlotte to negotiate with them, and subsequently, prior to the visit of Raulerson to Charlotte on July 20, requested petitioner's local manager, who had been conducting the negotiations on petitioner's behalf, to arrange a conference with Raulerson (R. 54–56, 57, 63–64; R. 83–84, 88, 196, 217–218, 266–268, 271–273, 276–277, 278–279, 284–285, 287, 300). Instead, Raulerson proceeded unilaterally to determine important matters such as wages and paid vacations as to which the employees sought to bargain collectively (supra, p. 4).

The bargaining conference of July 29, 1939, concluded with the understanding that petitioner's attorney would request Raulerson for a written state-

[2] The Union Committee had pointed out to petitioner that petitioner had been promising the employees wage increases for 3½ years, and that the promised increases had not been forthcoming (R. 55; R. 287, 301).

ment of his position with respect to certain of the Union demands (R. 57; R. 206). On August 16, after two such requests from his attorney, who was prodded by several calls from the Union committee, Raulerson advised the attorney by letter that he was opposed to certain Union proposals, that he "still had under consideration" certain other proposals, that he desired to submit counter-proposals, and that he was willing to meet with the Union in Charlotte to discuss the matter (R. 57–59; R. 121, 122–123, 206–207). At about this time Union Secretary Fullerton warned petitioner's attorney that the employees were "getting tired of waiting and being stalled along," and that unless Raulerson came to Charlotte to bargain with the Union "very shortly," the Union representatives could not be responsible for their actions (R. 59; R. 268, 273).

On August 31, the Union's business agent, McCrorie, called on petitioner's Charlotte superintendent, Garrett, and requested that Raulerson come to Charlotte not later than September 6 to negotiate with the Union (R. 59; R. 171–172).[3] Raulerson, being advised of the request the same day or the next day, told Garrett that he would

[3] The employees had previously held a meeting to discuss "definite action regarding getting Mr. Raulerson up here" (R. 268–269). McCrorie first insisted to Garrett that Raulerson be in Charlotte by September 2, but extended the time when Garrett protested that the request was unreasonable (R. 59; R. 171–172).

be unable to be in Charlotte on September 6 because pending litigation required his presence in Jacksonville on September 5 (R. 60; R. 220, 225, 227). Raulerson, who was then in Atlanta, Georgia, could have come to Charlotte in the interval between August 31 or September 1 and September 5, but he made no effort to do so (R. 60; R. 224–225).

On September 2 the Union voted to strike if Raulerson did not appear in Charlotte by 6 p. m. on September 6 (R. 60; R. 278, 291–292, 295). On September 5 Garrett first informed McCrorie that he had communicated with Raulerson, that Raulerson was involved in a court proceeding, and that he would come to Charlotte on September 9 or, preferably, on September 11 (R. 60–61; R. 173). McCrorie replied that September 6 at 6 p. m. was the "dead line" (*ibid.*). Garrett reported this conversation to Raulerson in Jacksonville the following morning (R. 61; R. 174). Raulerson's court proceeding had by this time been postponed to September 11 (R. 61; R. 174–175, 225–226). Nevertheless, he still made no effort to come to Charlotte although, admittedly, he could have left Jacksonville that day (R. 61; R. 225–227); he merely instructed Garrett to inform the Union that he would be in Charlotte to negotiate with the Union on September 13 (R. 61; R. 174–175). This was done shortly after noon on September 6 (R. 61; R. 175, 199–200).

476885—42——2

At 6 p. m. that evening 36 employees at the Charlotte terminal went on strike [4] for the purpose, as many testified and the Board found, "of inducing Raulerson to come to Charlotte to negotiate with the Union" (R. 61; R. 89, 96, 97, 98, 100, 102, 104, 107). Petitioner asked the strikers to return to work, and on their refusal immediately began to replace them. On September 8, having by then replaced all but one of the strikers, it resumed normal operations and sent each striker a notice of discharge (R. 61–62; R. 107, 176–177, 198–199).[5]

On September 8 and 9 the Union agreed to permit the strikers to return to work if Raulerson would agree to come to Charlotte and engage in collective bargaining with it (R. 62; R. 177–179, 209–211). The offer was communicated to Raulerson, who rejected it, stating that he preferred to maintain the *status quo* until he arrived in Charlotte on September 13 (R. 62; R. 302).

Raulerson finally met with the Union on September 13 (R. 62; R. 179–180, 212). When the

---

[4] On September 9, three employees at petitioner's High Point terminal engaged in a sympathy strike (R. 61; R. 102–103, 107, 279).

[5] Petitioner also discharged one employee whom it mistakenly believed to be a striker, and subsequently refused to reinstate him for the additional reason that his son was active in the strike (R. 68–70; R. 296–297, 298, 309). Petitioner asserts its willingness to reinstate this employee with back pay to the time of an alleged offer of reinstatement (Pet. 46–47).

meeting opened, he read the prepared statement set forth in the footnote (R. 62–63; R. 127–128, 212).[6] A Board agent who was present then requested Raulerson to "sit down" and discuss the situation with the Union (R. 62; R. 270). Raulerson replied that he "stood" on the prepared statement, and left the meeting (R. 63; R. 270, 212, 299). No efforts to renew negotiations were thereafter made by the Union or petitioner (R. 63; R. 212).

Upon the foregoing findings, based in turn upon the evidence referred to, the Board concluded that

---

[6] The management of the Great Southern Trucking Company has dealt with its employees and with the Union which represented its employees in the utmost fairness and good faith. In its relations and dealings with its employees, the Company has done even more than the law or reasonableness requires.

Despite this, a considerable number of the men saw fit to quit their jobs and go out on strike last Wednesday, September 6th. If the Company was to stay in business and if its operations were to go on, it was necessary that new men be hired to replace the men who had quit their jobs. We have replaced the men who left their jobs and at the present time the Company does not have any jobs open.

If any of the men who left their work and went out on strike now or hereafter desire to go back to work for the Great Southern Trucking Company, we will be glad to consider their applications if and when vacancies occur, and we will do so impartially and without any discrimination against the men who have gone out on strike and without being influenced by the fact that they belong to the Union.

Our information is that the Union does not claim to represent a majority of the men who have replaced those who went out on strike. This being true, it is our understanding that we are not required, nor indeed permitted, by law to engage in collective bargaining at the present time.

petitioner had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thus violating Section 8 (1) (R. 50–51); and had failed to bargain collectively with the Union in good faith, thereby violating Section 8 (1) and (5) of the Act (R. 63–67). The Board made the additional finding that the strike was caused "as a result of [petitioner's] unfair labor practices" (R. 66), and it concluded that the discharge of the strikers constituted a violation of Section 8 (1) and (3) of the Act (R. 68, 68–70).

The Board's order required petitioner to cease and desist from its unfair labor practices; to bargain collectively upon request with the Union; to reinstate the discharged employees and place upon a preferential employment list those for whom no positions were immediately available; to reimburse the discharged employees for any loss of pay suffered between the date of discharge and the date of the Trial Examiner's report [7] and between the date of the Board's order and the date of compliance; and to post appropriate notices (R. 74–76).

On October 1, 1941, petitioner filed in the court below a petition to review and set aside the Board's order (R. 257–262). The Board answered requesting enforcement of its order (R. 310–315). On April 13, 1942, the court handed down its opinion

[7] The Trial Examiner found that the strike had not been caused by petitioner's unfair labor practices and he did not recommend reinstatement or back pay (R. 31, 37).

(R. 317–327) and entered its decree (R. 328) enforcing the Board's order in full.

ARGUMENT

Petitioner's sole contention is that there is no substantial evidence to support the Board's finding that the strike was caused by petitioner's unfair labor practices (Pet. 2–3, 8–47). This contention presents no question of general importance, and furthermore is not substantiated by the record.

Petitioner's activities preceding the strike, which were found by the Board to be unfair labor practices, showed that petitioner had no intention of entering into a contract with the Union. From the beginning of the Union's organizational drive petitioner, through its local supervisory officials, had actively discouraged membership in the Union by disparaging remarks and by attempting to instigate the formation of a company union. After the Union had secured a majority of the employees at petitioner's Charlotte branch and had instituted negotiations with petitioner, petitioner attempted to secure defections from the Union. Petitioner attempted to discredit the value of the Union as a means of securing benefits for the employees by unilaterally granting raises in pay and vacations with pay, without, however, giving the Union, which was at that very time negotiating for such benefits, any credit for procuring them. Petitioner's attitude toward the Union and failure to deal with it in good faith were further evidenced by the

facts that the persons delegated by petitioner to represent it in the negotiations were without authority to sign any contract, and that Raulerson, the only person empowered to sign a contract with the Union, did not attend any of the conferences, although he frequently expressed his willingness to appear at the negotiations and although the Union representatives had asked that he do so. Shortly after one such request was made, Raulerson came to Charlotte and discussed the negotiations with petitioner's officials but he did not confer with the Union representatives.

These circumstances were not calculated to persuade the employees that Raulerson's failure to appear by September 6 was anything but another step in petitioner's process of frustrating the Union's efforts at effective bargaining. They were, on the contrary, most likely to persuade the employees that unless they went on strike petitioner would continue to stall the negotiations in order to avoid coming to a contract.

From these facts, the Board found that the cause of the strike lay in petitioner's unfair labor practices which preceded Raulerson's failure to appear in Charlotte on September 6, and not in the mere fact, by itself, of his nonappearance on that day. As the Circuit Court of Appeals expressed it:

> The real, motivating cause of the strike is found in the whole sequence of events, in which Raulerson's refusal to come to Charlotte before the deadline was merely the culmination and climax. (R. 327.)

The finding seems amply justified by the facts, and petitioner has not made a showing which warrants review by this Court.

CONCLUSION

The decision below is correct and presents no conflict or question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
VALENTINE BROOKES,
Attorney.

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
DAVID FINDLING,
RALPH WINKLER,
Attorneys,
National Labor Relations Board.

AUGUST 1942.